# FINAL RECOMMENDATIONS FOR THE DENTAL BOARD OF CALIFORNIA

## RECOMMENDATIONS OF THE JOINT SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

### ISSUE #1. (CONTINUE TO REGULATE THE PRACTICE OF DENTISTRY?)
**Should the licensing and regulation of dentists be continued?**

**Recommendation #1:** ***The Joint Committee and the Department recommend the continued regulation of the practice of dentistry.***

**Comments:** The practice of dentistry affects the health and safety of Californians and requires a high level of skill.

### ISSUE #2. (CONTINUE WITH THE BOARD?)
**Should the Board be continued, reconstituted, or become a bureau within DCA?**

**Recommendation #2:** ***The Joint Committee recommends that the current membership of the Board should be allowed to sunset, and the Board should be reconstituted as of July 1, 2002. In the meantime the Legislature should consider how the future membership of the board should be recomposed so as to assure adequate consumer and dental auxiliary representation and protection.***

**Comments:** There has been longstanding dissatisfaction with the deliberations and actions of this board by the various organizations representing dental auxiliaries and others for a variety of reasons. The complaints and concerns expressed are virtually the same as were made when the Board was last reviewed by the JLSRC four years ago. Some of these concerns or problems have been noted in recent audits by the California State Auditor and by the recent independent review of the board's investigative program and the need for sworn peace officers. The Board continues to be criticized for being controlled by its dentist majority and favorable to their interests over those of the public and the licensed dental auxiliaries. It has been accused of being unduly absorbed with minutiae – extensive deliberations on whether or not particular duties or functions may be performed by one or more of the categories of dental auxiliaries – the so-called "duty of the month" debate over the scopes of practice of dental auxiliaries.

The dental auxiliaries assert that the dentist majority is inherently biased, and that therefore greater representation on the board should be given to dental auxiliaries and the public or that the licensing of auxiliaries should be separated from that of dentists, statutorily codified, and administered by a separate, independent agency.

The California Dental Association (CDA) believes that the shortcomings of the board relate to both the limited background of the dentists who serve as its members and the structure of the licensing act

which appears to require affirmative regulatory action by the board each and every time for any adjustment in the duties allowed ("permitted") to be performed by dental auxiliaries. CDA's recommendations are to require the Governor to consider appointing at least one dentist with an academic background or a dentist with extensive research background, and creation of a broad-based task force to revise the current licensure/training/education model of licensure that exists for the various categories of dental auxiliaries – with an eye towards authorizing broader and more generalized scopes of practice and thereby avoid extensive debate over the use of every new technique or piece of equipment or technology.

Finally, the Department of Consumer Affairs' sunset report recommends establishment of a more structured framework that would be applied in defining the scope of practice for dental auxiliaries based on a general range of duties. The restructuring associated with all of the recommendations above would seem to require a significant change in the way the Dental Board envisions and then carries out its responsibilities.

Some specific problems with cited with this Board include:

- Recalcitrance and excessive delay in adopting the regulations that are necessary to implement enacted legislation – particularly when related to dental auxiliaries - such as that which created the Registered Dental Hygienist in Alternative Practice (RDHAP.)
- Ignoring the intent of the Legislature in enacting legislation - again such as the RDHAP.
- Delay and apparent ambivalence, at least initially, with the concerns of the Legislature and other regarding the illegal practice of medicine by licensed dentists through the advertising and performance of elective cosmetic surgery.
- Excessive delay in the Board's enforcement (disciplinary) actions – and the inability to identify the causes therefore, and develop and implement a plan to reduce the long periods of time involved at each stage of the disciplinary process.
- Apparent bias against dental auxiliaries, and in particular – dental hygienists – by delay or failure to authorize them to practice procedures that are within their competence through their education and training.
- Excessive delay in revising and releasing the Dental Materials Fact Sheet mandated by legislation enacted 11 years ago – which would inform dental patients that dental amalgam contains mercury – and the current status of scientific findings regarding its use.
- Apparent failure of the Board, despite some recent efforts to improve its case management system, to recognize the need to implement a more detailed time management system for its investigative activities so that a proper assessment can be made of the productivity, workload, and need for having additional permanent sworn peace officers as its investigators.

## ISSUE #3. (REVIEW DENTISTS' CONTROL OVER THE BOARD'S REGULATION OF THE PROFESSION?)

**Should the scope of practice for dental auxiliaries be put into statute?**

**Recommendation #3**: ***The Joint Committee and the Department recommends the scope of practice for dental auxiliaries (authorized duties) be moved from regulations into statute. While some authorized duties should be designated as under the direct supervision of a dentist, others should be clearly delegated as categories of practice to the auxiliaries.***

**Comments:** The Department believes the Board *does* exercise too much control over the licensing, regulation, and practices of dental auxiliaries. There is a long history to the Board's restrictive actions toward the practices of dental auxiliaries.

**ISSUE #4. (REVIEW DENTISTS PERFORMING PROCEDURES BEYOND THEIR SCOPE OF PRACTICE?)**
**Should specific actions be taken regarding illegal practices of medicine by licensed dentists?**

**Recommendation #4:** ***The Joint Committee and the Department recommend that oral and maxillofacial licensees need to be informed about the current statutory limitations on the services permitted under the authority of a dentist license; and that violations of those limitations, such as advertising certain cosmetic surgery services that are not authorized by a dentist license, should be actively investigated and disciplined. In addition, the Joint Committee and the Department recommend that the next occupational analysis of dentistry include a survey of the practices of oral and maxillofacial licensees and a report to the JLSRC on the findings upon completion of that analysis.***

**ISSUE #5. (REVISE REQUIREMENTS FOR DENTAL AUXILIARY EDUCATIONAL PROGRAMS?)**
**Should the board change its regulations to facilitate the creation of educational programs necessary to enable a licensed Registered Dental Hygienist (RDH) to become a Registered Dental Hygienist in Alternative Practice (RDHAP)?**

**Recommendation #4:** ***The Joint Committee and the Department recommend that the current lack of availability of RDHAP educational programs be reviewed. Also, the Joint Committee and the Department recommend that current regulatory limitations that require these programs to be affiliated with a dental school be revised so that programs, like the one involved in the Heath Manpower Pilot Project, qualify to provide the required training for RDHAP licensure.***

**ISSUE #6. (REQUIRE DENTISTS TO PROVIDE MERCURY WARNING INFORMATION TO PATIENTS REQUIRING CAVITY FILLINGS?)**
**Should the board require dentists to provide the Board's Dental Materials Fact Sheet to any patient who requires a restoration (cavity filling), and should dentists be required to advise their patients regarding the different types of restorative filling materials, that amalgam fillings contain 50% mercury which is considered a hazardous substance, and disclose the health risks of mercury to patients and dental office employees who work with dental amalgam?**

**Recommendation #6:** ***The Joint Committee and the Department recommend that dentists be required to provide "The Dental Materials Fact Sheet" that discusses possible health risks related to mercury to all patients prior to the performance of any dental restoration that could involve the use of dental amalgam. Dentists should also be required to make the fact sheet available in their offices in a prominent location.***

**Comments:** In fact, when it was brought to the Department's attention that the Board had not produced the fact sheet, which was required in statute by SB 934 (Watson, Chapter 801, Statutes of

1992), the Department asked the Board to meet the mandated requirement. As of this date, an updated fact sheet is not available.

**ISSUE #7. (ESTABLISH BROADER SCOPE OF PRACTICE FOR DENTAL AUXILIARIES?)**
**Should a system be established to determine appropriate scope and standards of practice for dental auxiliaries?**

**Recommendation #7:** ***The Joint Committee and the Department recommend that a system be established for easy determination of appropriate scope and standards of practice for dental auxiliaries which allows them to adopt and utilize new equipment and emerging technologies as they arise.***

**ISSUE #8. (REVIEW EDUCATIONAL REQUIREMENTS ON INFECTION CONTROL, CARDIOPULMONARY RESUSCITATION, AND DENTAL JURISPRUDENCE?)**
**Should these courses be required on an ongoing basis, and should they be required of all licensed dental assistants and hygienists?**

**Recommendation #8:** ***The Joint Committee and the Department recommend that educational requirements be implemented for infection control and CPR on an ongoing basis; and dental jurisprudence be required on a one-time basis for registered dental assistants and licensed dental hygienists.***

**ISSUE #9. (ESTABLISH ENFORCEMENT MONITOR TO IMPROVE DISCIPLINARY PROCESS?)**
**Should the Legislature authorize the Department to appoint an enforcement monitor, as was recently authorized for the Contractors' State License Board, to monitor, evaluate and make recommendations for improving the complaint and disciplinary enforcement system of the Dental Board?**

**Recommendation #9:** ***The Joint Committee and the Department recommend the appointment of an Enforcement Program Monitor by the Director of the Department, no later than January 31, 2002, whose duties would include monitoring and evaluating the dental disciplinary system and reporting his/her findings, as specified, to the Department and the Legislature. The Enforcement Program Monitor should be funded through the State Dentistry Fund.***

**ISSUE #10. (STATE LICENSING OR REGULATION OF INDEPENDENT PRACTICE ASSOCIATIONS (IPAS) AND DENTAL MANAGEMENT SERVICE ORGANIZATIONS (DMSOS) THAT ARE OPERATING WITHOUT BEING REGULATED AND MAY CREATE A LACK OF ACCOUNTABILITY IN THE PROVISION OF DENTAL SERVICES.)**
**Should the Board take any action regarding the operation of unlicensed independent dental practice associations (IPAs) and dental management service organizations (DMSOs)?**

**Recommendation #10:** ***The Joint Committee recommends that the Board provide the JLSRC with specific information regarding the activities or services provided by DMSOs or IPAs, the legal***

***relationship between the DMSOs or IPAs and individual dentists and dental patients, and why the board believes that existing dental licensing or health care service licensing laws are inadequate to provide their intended protection to the public, and sponsor or support legislation.***

**Comments:** This issue was raised in the Board's Sunset Report. The Board appointed and ad hoc committee on April 21, 1999 to study the subjects of independent practice associations (IPAs) and dental management service organizations (DMSOs). The board states that it is aware that there are DMSOs operating within California that are not regulated by the Board nor by the State Department of Managed Health Care. The Board believes that this situation creates a subcategory of dental service operating without accountability, and states that Board staff have been meeting with representatives of the managed health care industry in an attempt to define an approach to correcting the situation. The Board has not indicated that such an approach has been yet defined or the specific nature of the problems and their magnitude. Last Session, AB 2332 (Mazzoni) was introduced and would have required DMSO's to be licensed by the Department of Managed Health Care as a health care service plan. That bill died in its first policy committee.

## ISSUE #11. (RESTRICTIONS ON THE ADMINISTRATION OF ANESTHESIA AND SEDATIVE IN DENTAL OFFICES.)

**Should the board limit dentists to giving general anesthesia and conscious sedation to children in hospitals, and prohibit ether procedure in stand-alone dental offices when there is no anesthesiologist present?**

**Recommendation #11:** ***The Joint Committee recommends that the Board closely monitor the occurrence of problems, morbidity and mortality resulting from the administration of general anesthesia and oral conscious sedation in dental offices, particularly with respect to minors, to determine the specific cause or causes, whether those causes relate to competency, procedures, equipment, support staff, or facilities, and then take action via regulation, legislation or otherwise to eliminate those problems.***

**Comments:** This issue was presented by Consumers for Dental Choice (CDC). The Dental Practice Act currently prohibits any dentist from administering oral conscious sedation on an outpatient basis to a patient under 13 years of age unless the dentist meets specified licensing and permit requirements. In addition to having a dental license, the dentist must obtain either a general anesthesia permit or a conscious sedation permit from the Board. To obtain such a permit the dentist must show that he or she has taken additional education regarding oral sedation and/or anesthesia. The law also requires that the dentist must be physically present in the treatment facility when oral sedation is being administered and that the dental office meet certain facility and equipment requirements specified by the board in regulation. The dental office is also subject to Board inspection both initially prior to the issuance of a permit and later on a continuing basis.

Current law also permits a physician, until January 1, 2002, to administer general anesthesia in a dental office, whether or not the dentist has been certified to administer general anesthesia, if the physician holds a valid general anesthesia permit issued by the Dental Board.

Consumers for Dental Choice argue that performance of oral conscious sedation by a dentist in the outpatient setting (dental office) is too risky and that a tragic number of deaths have occurred as a result of this practice. CDC argues that performance of either procedure on a child should either be

done with a licensed physician anesthesiologist present or in a licensed hospital setting where there is a sophisticated emergency back-up system in place.

**ISSUE #12. (REQUIRING EDUCATION IN INFECTION CONTROL, CARDIOPULMONARY RESUSCITATION (CPR) AND DENTAL JURISPRUDENCE) Should courses in infection control, CPR, and dental jurisprudence be required on an ongoing basis for dental rather than just once, and should it be required of unlicensed dental assistants rather than just licensed dental assistants and licensed dental hygienists?**

**Recommendation #12:** ***The Joint Committee recommends that the Board review the recommendations from the Committee on Dental Auxiliaries (COMDA) regarding what education or examinations should be required regarding these subjects, and take appropriate regulatory action. If the COMDA's recommendations are rejected, the Board should provide specific reasons for that rejection.***

**ISSUE #13. SHOULD DENTISTS LICENSED BY OTHER JURISDICTIONS (STATES OR COUNTRIES) WITH EQUIVALENT EDUCATION, TRAINING AND EXAMINATION REQUIREMENTS BE PERMITTED TO OBTAIN A LICENSE IN CALIFORNIA BY "CREDENTIAL" AND WITHOUT HAVING TO TAKE CALIFORNIA'S LICENSE EXAM?**

**Recommendation #13:** ***The Joint Committee recommends that the Board should again consider supporting licensure-by-credential legislation for out-of-state licensed dentists who have met education, training and examination requirements that are equivalent to California's.***

**Comments:** The board has rejected licensure by credential purportedly because other states may not reciprocate by permitting all California licensed dentists to qualify for licensure by credential in their state. The board has noted that dentists licensed in California who did not graduate from an accredited dental school would never qualify for licensure in another state which requires such graduation. However, licensure by credential is intended to increase the supply of qualified licensed dentists in California in order to increase accessibility to dental care for Californians - rather than enabling California licensed dentists to be licensed in other states. Reciprocity does not seem to be relevant to the intended purpose of licensure by credential. Criticism has been made that the Board has twice rejected pursuing licensure by credential for purely anti-competitive reasons.